

**BEST AVAILABLE COPY**KCC 4982.1 (K-C 19,834)  
PATENTREMARKS

After entry of this Amendment C and Response After RCE, claims 1-13, 15-23, 25, and 27 will be pending. Applicants have amended claims 1, 11, 18, 23, 25, and 27. Specifically, claims 1 and 23 have been amended to require the rheology enhancer to be selected from the group consisting of polyisobutylene; hydrogenated polyisobutene and butylene/ethylene/styrene copolymers; hydrogenated polyisobutene and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; isononyl isononanoate and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; dodecane and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; isohexadecane and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; isopropyl palmitate and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; and combinations thereof. Support for the above amendment can be found in previously presented independent claims 1 and 23 and in the instant specification on page 10, paragraph 28. Additionally, Applicants have amended claim 11 to correct typographical errors and claim 22 to provide proper antecedent basis. Claim 18 has been amended to include titanium dioxide as a particulate material. Support for this amendment can be found in the specification on page 12, paragraph 32. No new matter has been added by these amendments. Applicants respectfully request reconsideration and allowance of all pending claims.

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1. Rejection of Claims 1-13 under 35 U.S.C. §102(b).

Claims 1-13 have been rejected under 35 U.S.C. § 102(b) as anticipated by Morrison (U.S. 6,340,467).

Claim 1, as amended herein, is directed to a topical ointment comprising from about 10% by total weight of the ointment to about 89% by total weight of the ointment of an emollient, from about 10% by total weight of the ointment to about 50% by total weight of the ointment of a structurant, and from about 0.1% by total weight of the ointment to about 40% by total weight of the ointment of a rheology enhancer. The rheology enhancer is selected from the group consisting of polyisobutylene; hydrogenated polyisobutylene and butylene/ethylene/styrene copolymers; hydrogenated polyisobutene and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; isononyl isononanoate and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; isododecane and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; isohexadecane and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; isopropyl palmitate and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; and combinations thereof.

Morrison discloses a solid or semi-solid hydrocarbon gel for use as an ointment, balm, or salve to treat wounds, burns, or injuries to the skin. The hydrocarbon gel comprises from greater than about 0% to about 99% by weight solid or semi-solid hydrocarbon and from greater than about 0% to about 50% by weight of at least one block copolymer selected from the group consisting of a triblock copolymer; a radial block copolymer; a multi-block copolymer; a diblock copolymer; and mixtures of

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these polymers. Suitable hydrocarbons for use in the hydrocarbon gel include paraffin wax, petrolatum, synthetic waxes, mineral waxes, vegetable oil waxes, polyethylene waxes, microcrystalline waxes, natural waxes such as carnauba, beeswax, and the like.<sup>1</sup> Suitable block copolymers include rubber-type polymers consisting of styrene monomer units and rubber monomer units, and/or comonomer units; diblock styrene polymers such as styrene-ethylenepropylene, styrene-ethylenebutylene, styrene-butadiene, and styrene-isoprene; and triblock styrene polymers such as styrene/ethylene/butadiene/styrene, styrene/butadiene/styrene, and styrene/isoprene/styrene.<sup>2</sup>

Optionally, a liquid hydrocarbon, such as white mineral oil, can be included in the hydrocarbon gel of Morrison in an amount ranging from about 5% to 75% by weight.<sup>3</sup> Additionally, when the hydrocarbon gel is a solid hydrocarbon gel, the gel may optionally include from about 0.1% to about 50% by weight additional ingredients such as various waxes. Examples of the various waxes include carnauba wax, beeswax, or candellia wax.<sup>4</sup>

Specifically, Morrison fails to disclose the specific rheology enhancers as required by amended claim 1. At best, the hydrocarbon gels disclosed in the Morrison reference include: mineral oil and/or petrolatum in combination with polymers including ethylene/propylene/styrene copolymers, styrene copolymers, butylene/ethylene/styrene copolymers, styrene/butadiene copolymers, styrene/isoprene copolymers, styrene/ethylene/butadiene/styrene copolymers,

<sup>1</sup> U.S. 6,340,467 at column 2, lines 26-30.

<sup>2</sup> Id. at column 3, lines 17-62.

<sup>3</sup> Id. at column 2, lines 46-51.

<sup>4</sup> Id. at column 4, lines 34-38.

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styrene/butadiene/styrene copolymers, and  
styrene/isoprene/styrene copolymers.

As stated in M.P.E.P. §2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Since Morrison fails to disclose the specific rheology enhancers required by amended claim 1, Morrison fails to disclose each and every limitation of amended claim 1. As such, claim 1 is novel over the Morrison reference.

Claims 2-13 depend directly from claim 1. As such, claims 2-13 are patentable for the same reasons as claim 1 set forth above, as well as for the additional elements they require.

2. Rejection of claims 1-27 under 35 U.S.C. §103(a).

Claims 1-27 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Krzysik et al. (U.S. 6,149,934) in view of Morrison (U.S. 6,340,467).

Amended claim 1 is discussed above.

U.S. 6,149,934 ('934) discloses an absorbent article having a bodyside liner that includes a lotion formulation for reducing the abrasion of the skin caused by the liner and for improving skin health. The lotion formulation comprises from about 5 to about 95 weight percent of an emollient, from about 5 to about 95 weight percent of a wax, and, optionally, from about 0.1 to about 25 weight percent of a viscosity enhancer.

As noted by the Office, the '934 reference fails to teach or suggest the rheology enhancers as required in amended claim 1. In an attempt to find each and every element of claim 1 as required by the M.P.E.P. for a determination of *prima facie*

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obviousness, the Office cites Morrison for combination with '934.

The Morrison reference is discussed above.

In order for the Office to show a *prima facie* case of obviousness, M.P.E.P. §2143 requires that the Office must meet three criteria: (1) the prior art references must teach or suggest all of the claim limitations; (2) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the references, and (3) there must be some reasonable expectation of success. The Office has clearly failed to meet its burden under number (1) above, as the cited references, alone or in combination, have not taught or suggested all of the claimed limitations of Applicants' claim 1.

As noted above, '934 fails to teach or suggest each and every limitation of claim 1. Specifically, no where in the '934 reference is it taught or suggested to use the specific rheology enhancers of claim 1 in the lotion formulation of '934. At best, the suitable viscosity enhancers disclosed in the '934 reference include polyolefin resins, lipophilic/oil thickeners, ethylene/vinyl acetate copolymers, polyethylene, silica, talc, colloidal silicone dioxide, zinc stearate, cetyl hydroxyl ethyl cellulose and other modified celluloses, and the like, and mixtures thereof.<sup>5</sup>

The Morrison reference fails to overcome the above shortcomings. As noted above, the Morrison reference fails to teach or suggest the rheology enhancers required in amended claim 1. As such, neither of the cited references disclose each

<sup>5</sup> U.S. 6,149,934 at column 10, lines 57-62.



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and every limitation required by amended claim 1, and claim 1 is patentable over the cited references.

Claims 2-13, 15-22, and 27 depend directly or indirectly from claim 1. As such, claims 2-13, 15-22, and 27 are patentable for the same reasons as claim 1 set forth above, as well as for the additional elements they require.

Amended claim 23 is similar to amended claim 1 and further requires the topical ointment to comprise from about 0.1% by total weight of the ointment to about 1% by total weight of the ointment of a particulate material, and from about 0.1% by total weight of the ointment to about 10% by total weight of the ointment of a low HLB surfactant. Claim 23 is patentable for the same reasons as claim 1 set forth above, as well as for the additional elements it requires. Furthermore, claim 25, which directly depends from claim 23, is patentable for the same reasons as claim 23 set forth above, as well as for the additional elements it requires.

3. Rejection of claims 1-6, 10-13, and 19-22 under 35 U.S.C. §103(a).

Claims 1-6, 10-13, and 19-22 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Krzysik et al. (U.S. 6,287,581) in view of Morrison (U.S. 6,340,467).

Claim 1, as amended herein, is discussed above.

U.S. 6,287,581 ('581) discloses a skin barrier enhancing body side liner on an absorbent article comprising a lipid-enriched hydrophobic composition. The lipid-enriched hydrophobic composition comprises from about 0.1 to about 95 weight percent natural fats or oils, from about 0.1 to about 10

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weight percent sterols and sterol derivatives, from about 0.5 to about 20 weight percent of humectant, from about 1 to about 20 weight percent of water-in-oil emulsifying surfactant/surfactant combination having an HLB range from about 3 to about 6, from about 5 to about 95 weight percent emollient, from about 5 to about 95 weight percent wax, and from about 1 to about 25 weight percent viscosity enhancer.

As noted by the Office, the '581 reference fails to teach or suggest the rheology enhancers as required in amended claim 1. In an attempt to find each and every element of claim 1 as required by the M.P.E.P. for a determination of *prima facie* obviousness, the Office cites Morrison in combination with '581.

The Morrison reference is discussed above.

In order for the Office to show a *prima facie* case of obviousness, M.P.E.P. §2143 requires that the Office must meet three criteria: (1) the prior art references must teach or suggest all of the claim limitations; (2) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the references, and (3) there must be some reasonable expectation of success. The Office has clearly failed to meet its burden under number (1) above, as the cited references, alone or in combination, have not taught or suggested all of the claimed limitations of Applicants' claim 1.

As noted above, '581 fails to teach or suggest each and every limitation of claim 1. Specifically, nowhere in the '581 reference is it taught or suggested to use the specific rheology enhancers of claim 1 in the lipid-enriched hydrophobic composition of '581. At best, the suitable viscosity enhancers

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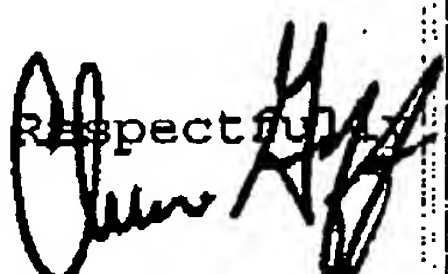
disclosed in the '581 reference include polyolefin resins, polyolefin polymers, ethylene/vinyl acetate copolymers, polyethylene, and the like, and mixtures thereof.<sup>6</sup>

The Morrison reference fails to overcome the above shortcomings. As noted above, the Morrison reference fails to teach or suggest the rheology enhancers required in amended claim 1. As such, neither of the cited references disclose each and every limitation required by amended claim 1, and claim 1 is patentable over the cited references.

Claims 2-6, 10-13, and 19-22 depend directly or indirectly from claim 1. As such, claims 2-6, 10-13, and 19-22 are patentable for the same reasons as claim 1 set forth above, as well as for the additional elements they require.

In view of the above, Applicants respectfully request favorable reconsideration and allowance of all pending claims. The Commissioner is hereby authorized to charge the fee of \$120.00 for a one month extension and any additional fee in connection with this Amendment C and Response After RCE to Deposit Account Number 19-1345 in the name of Senniger, Powers, Leavitt & Roedel.

Respectfully submitted,

  
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<sup>6</sup> U.S. 6,287,581 at column 10, lines 25-29.



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